

DECISION



THE COMPTROLLER GENERAL
OF THE UNITED STATES
WASHINGTON, D.C. 20548

15874

FILE: B-198725

DATE: January 13, 1981

MATTER OF: Edward E. Davis Contracting, Inc.

[Protest Alleging Improper Bid Specifications]

DIGEST:

1. Protester has burden of proving allegedly improper bid specifications to be unreasonable and unduly restrictive of competition. Where protester's general allegations are unsupported by convincing evidence, burden is not met.
2. Mere fact that protester is unwilling or unable to meet terms of specification does not render the specification unduly restrictive if it represents legitimate needs of the agency.
3. Fact that IFB amendments which merely postponed bid opening date were never received by protester is not prejudicial where protester did receive third amendment which made substantive revisions to IFB and established final bid opening date.

Edward E. Davis Contracting, Inc. (Davis) has protested invitation for bids (IFB) No. N62467-80-B-2918 issued by the Department of the Navy, Naval Air Station Mayport, in Jacksonville, Florida for maintenance and repair services for family housing.

The original IFB was issued on April 18, 1980 with bid opening scheduled for May 20, 1980. Davis filed its protest by letter dated May 1, 1980, alleging that the Schedule of Prices was ambiguous and certain technical specifications were unreasonable. The Navy subsequently issued Amendments 0001 and 0002 to postpone bid opening so that corrections could be effected. Ultimately, Amendment 0003 was issued on August 7, 1980, revising the Schedule of Prices and setting the bid opening for

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September 5, 1980. Fourteen (14) bids were received, and award was made to the lowest bidder on September 23, 1980. The protester did not submit a bid.

The Navy contends that its issuance of Amendment 0003 corrected the improprieties alleged in the protest. Davis disagrees, and further contends that it was purposefully prevented from submitting a bid since the contracting officer failed to send copies of the first two amendments.

As to the first issue, various errors in the Schedule of Prices were rectified by Amendment 0003. For example, erroneous references to paragraph numbers in the technical specifications were corrected. Items related to maintenance of floor areas which were originally quantified in terms of number were changed to reflect total area in square feet. Items which were grouped together on the same price line (e.g., venetian blinds and roller shades) were broken down as separate line items with specific quantities attached to each. In sum, all of the protester's complaints regarding ambiguities in the Schedule of Prices were answered by Amendment 0003 and we need not consider them further. However, we will address Davis' contentions regarding the reasonableness of the technical specifications, since that portion of the IFB was not altered by amendment.

It is well established that contracting agencies have wide discretion in determining the Government's needs and the appropriate methods of accommodating those needs. See United States Crane Certification Bureau, Inc., B-197433, April 2, 1980, 80-1 CPD 247, and cases cited therein. Since the agency is most familiar with the procurement history and the particular conditions involved, it is in the best position to determine the specifications which will meet its future requirements. Maremont Corporation, 55 Comp. Gen. 1362 (1976), 76-2 CPD 181. Thus, our Office will not question a restriction in a solicitation's specifications unless it is shown to be unreasonable and therefore unduly restrictive of competition. In the instant case, we have carefully reviewed the record and conclude that Davis has not met its burden of proving the IFB specifications to be unreasonable.

Firstly, Davis contends that certain provisions in the IFB give an unfair advantage to the Navy. For instance, Paragraph 1A.11(c) of the specifications defines "Service Work" so as to include service calls of up to "three related items concurrently required for a housing unit involving one particular system; i.e., plumbing, electrical, appliances, heating and air conditioning, * * *" Davis claims that this provision could work a hardship on the contractor by allowing the Navy to include three items on the same service call, any or all of which could involve a significant number of labor hours. We disagree. From the face of the specification, it seems apparent that the Navy merely seeks to consolidate service calls to the housing area whenever practicable. The examples given in the IFB, such as fixing the bathroom lavatory and kitchen faucet on the same service call, do not indicate an intent to take unfair advantage of the contractor's position. In addition, Davis' argument ignores those service calls which require minimal time and effort of the contractor. We do not think it unreasonable for the Navy to require bidders to submit a fixed price per service call based upon the bidder's experience as to the average time required per call.

Similarly, Davis contests the fact that the contractor is not to be compensated for service calls to units where the tenant is not at home (See Paragraph 4A-4). Again, we cannot say that this provision is inherently unfair. Despite the fact that no separate line item is listed for these visits, the bidder can impute their effect into the overall service costs quoted elsewhere in the bid.

Secondly, Davis protests certain specifications as creating unnecessary amounts of paperwork, such as work authorizations and monthly reports (Paragraphs 3A.2, 3A.3.4 and 3A.5). However, the Navy is in the best position to determine its informational needs which we presume to be reasonable unless proven otherwise. Aside from its general allegations, Davis has not supported its contentions with convincing evidence.

Thirdly, Davis objects to Paragraph 2A.8, which states:

"The Contractor shall maintain on the site, or have immediately available, all material and supplies required to accomplish emergency and service work within the prescribed response criteria."

Davis claims this provision is unreasonably restrictive and is unfair because the contractor is not paid for materials stored on the job site. However, the mere fact that a potential bidder is unwilling or unable to compete because of the terms of a specification does not render the specification unduly restrictive if it represents the legitimate needs of the agency. J.S. Tool Co., Inc., B-193147, March 7, 1979, 79-1 CPD 159. Davis has offered no evidence to show the specification does not fulfill a reasonable need, and we will, therefore, not question it.

The second issue raised by the protest is whether Davis was improperly denied an opportunity to bid because it never received Amendments 0001 and 0002. We have been advised by the Navy that copies of the amendments were sent to Davis when originally issued. The Navy points out that Davis has recently changed its address, which could be an explanation for non-receipt. While it is true that, as a general rule, risk of receipt falls upon the bidder, 52 Comp. Gen. 281 (1972), Davis states that it made subsequent requests for copies of the two amendments without response from the Navy.

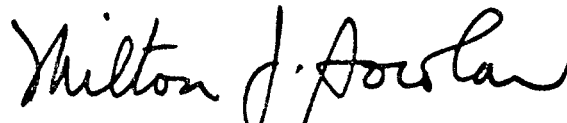
Defense Acquisition Regulation § 2-208(c) states:

"(c) Any information given to a prospective bidder concerning an invitation for bids shall be furnished promptly to all other prospective bidders, as an amendment to the invitation, if such information is necessary to bidders in submitting bids on the invitation or if the lack of such information would be prejudicial to uninformed bidders. * * *"

The question becomes then, whether prejudice to Davis resulted from the fact that it did not possess copies of the amendments, and whether the information contained in the amendments was necessary in submitting a bid. We find neither to have been the case, and accordingly, we cannot sustain the protest on this point.

Amendments 0001 and 0002 were issued to serve as notification of postponements of the bid opening date. Neither amendment contained substantive information pertaining to the bid. For that reason, and because Davis did receive the final amendment (No. 0003) containing the amended Schedule of Prices and the final bid opening date, it seems apparent that Davis was not without any necessary information. Likewise, we disagree with Davis' argument that absence of those first two amendments prejudiced, or in any way prevented, the submission of a responsive bid. A prospective contractor in possession of the information contained in Amendment 0003, as was Davis, was fully informed as to the provisions of the solicitation. An award to Davis would not have been precluded had that firm bid on the basis of Amendment 0003, yet failed to acknowledge receipt of Amendments 0001 and 0002. The failure to acknowledge receipt of an amendment which merely extends the bid opening date may be waived as a minor informality. See R.C. Hughes Corp., B-181673, December 12, 1974, 74-2 CPD 328, and cases cited therein.

For the above reasons, we deny the protest. We point out, however, that we have disapproved of the Navy's procedure of requiring bidders to submit only a total price at bid opening, with the low bidder supplying a detailed schedule of its prices for these services some time thereafter. Garrett Enterprises, Inc., B-196659, September 29, 1980, 59 Comp. Gen. ___, 80-2 CPD 227. The holding in Garrett currently is being reconsidered at the request of the Navy. Consequently, and since the protester has not objected to the use of the procedure here, we do not believe a recommendation for corrective action in this case is warranted.



For the Comptroller General
of the United States